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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,471	09/08/2003	Jonathan R. Broek	B70.12-0001	2674
27367	7590	09/06/2005	EXAMINER	
WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1600 - INTERNATIONAL CENTRE 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			MCCARRY JR, ROBERT J	
		ART UNIT	PAPER NUMBER	3617

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/657,471	BROEK, JONATHAN R.	
	Examiner Robert J. McCarry, Jr.	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 April 1985.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 6,10 and 11 is/are allowed.
- 6) Claim(s) 2,4,5,7,8 and 12-18 is/are rejected.
- 7) Claim(s) 9,19 and 20 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 5, 7, 8, 12-14 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al (US 4,895,380) in view of Johnson (US 5,711,227).

Brooks et al discloses a creeper comprised of a frame and a body for supporting a person. The frame and body components are able to be moved from a lower position to a raised position, as shown in figures 1 and 2. The body can also be raised from a supine position where the user is laying down to a raised position shown in figure 3 where the user would be sitting up, and these positioned are held in place by a locking device connected to the frame. The creeper is supported on four wheels, one at each corner of the device, and enables the creeper to move from one position to another as dictated, and propelled, by the user.

Brooks et al discloses the creeper as described above. However, Brooks et al does not disclose the vehicle moving along a track with flanged wheels. Johnson discloses trolley which moves along a track comprised of two parallel rails. The vehicle is further comprised of a plurality of wheels having first and second flanges on either side of the wheel. The flanges contact the sides of the rail while the radial portion of the

wheel contacts the top of the rail. It would have been obvious to one of ordinary skill in the art to have used the wheels and rails, like those of Johnson, as a teaching to be applied to a creeper, like that of Brooks et al in order to provide the creeper with a stable support surface and provide ease of movement for the user.

Allowable Subject Matter

Claims 9, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6, 10 and 11 are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (571) 272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert J. McCarry, Jr.
Examiner
Art Unit 3617

RJM
September 2, 2005


S. JOSEPH MORANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600